

139 E. WARM SPRINGS RD.
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BRANDON | SMERBER
LAW FIRM

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10 *99 CENTS ONLY STORES LLC dba*
99 Cents Only Store #333

11 **UNITED STATES DISTRICT COURT**

12 **DISTRICT OF NEVADA**

13
14 TRACI BARKER, an individual,

15 Plaintiff,

16 vs.

17 99 CENTS ONLY STORES LLC dba 99
18 Cents Only Store #333, a Foreign Limited-
19 Liability Company; DOES I through XXX;
20 ROE CORPORATIONS I through XXX,
inclusive,

21 Defendants.

CASE NO.: 2:22-cv-428

22 **DEFENDANT 99 CENTS ONLY STORES LLC dba 99 Cents Only Store #333'S**
23 **NOTICE OF REMOVAL OF ACTION TO UNITED STATES DISTRICT COURT**
24 **UNDER 28 USC § 1441(a)**

25 Defendant, 99 CENTS ONLY STORES LLC dba 99 Cents Only Store #333, by its
26 undersigned attorney, LEW BRANDON, JR., ESQ., JEFFREY J. ORR, ESQ., and HOMERO
27 GONZALEZ, ESQ., of BRANDON | SMERBER LAW FIRM, hereby removes the above-
28

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captioned case to the United States District Court, Clark County, Nevada, where the action is now pending, pursuant to 28 USC § 1441(a) and states as follows:

1. The above-entitled action was commenced in the Eighth Judicial District Court, Clark County, State of Nevada on February 15, 2022, bearing Case No. A-22848304-C. The action is now pending in the Eighth Judicial District Court, Clark County, State of Nevada.

2. Plaintiff filed her initial complaint on or about February 15, 2022. Plaintiff's Complaint fails to state that this case is one which is or has become removable. *See Harris v. Bankers Life & Cas. Co.*, 425 F.3d 689 (9th Cir. 2005). Defendant, 99 Cents Only Stores LLC dba 99 Cents Only Store #333 filed an Answer to the initial complaint on March 1, 2022.

3. On March 3, 2022, Plaintiff served upon Defendant, 99 Cents Only Stores LLC dba 99 Cents Only Store #333, her Petition for Exemption from Arbitration, wherein Plaintiff alleges that he sustained general damages of approximately One Hundred Ninety-One Thousand Seven Hundred Twenty-Nine Dollars & 53/100 (\$191,729.53) in past medical specials for left humerus fracture, neck pain, left wrist drop, left wrist pain, left shoulder, bodily limbs, organs and systems damage. This Notice of Removal was filed timely as it was filed within thirty (30) days of service of the Petition for Exemption from Arbitration served upon 99 Cents Only Stores LLC dba 99 Cents Only Store #333, on March 3, 2022, which was the first motion, order or other paper from which it could first be ascertained that this case is one which is or has become removable. *See* 28 U.S.C. 1446(b); *Harris*, 425 F.3d 689.

4. Pursuant to Fed. R. Civ. P. 6 (a), the last day of the thirty (30) day period set forth under 28 U.S.C. 1446(b) is April 4, 2022. *See* 28 U.S.C. 1446(b), *Harris v. Bankers Life & Cas. Co.*, 425 F.3d 689 (9th Cir. 2005).

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1 5. This action concerns an allegation that the Defendant failed to design, construct,
2 control, supervise, repair and/or maintain the property in a reasonable and safe manner, causing
3 injury to Plaintiff.

4 6. At the commencement of this action and at the time of the filing of this Notice of
5 Removal, Plaintiff, TRACI BARKER, was, and now is, a citizen of the County of Clark, State of
6 Nevada.

7 7. At the commencement of this action and at all times herein, Defendant, 99
8 CENTS ONLY STORES LLC, was, and now is, a limited liability company duly organized and
9 existing under the laws of the County of Los Angeles, State of California with its principal place
10 existing under the laws of the County of Los Angeles, State of California with its principal place
11 of business in California, and therefore, is a citizen of the State of California.

12 8. A limited liability company is a citizen of every state in which its members are
13 citizens. *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006). Where
14 removal from state to federal court is at issue, the party seeking removal “bears the burden of
15 establishing federal jurisdiction” *Naffe v. Frey*, 789 F.3d 1030, 1040 (9th Cir. 2015).

16 9. Here, 99 CENTS ONLY STORES LLC’s sole member is NUMBER
17 HOLDINGS, INC., a Delaware Corporation. NUMBER HOLDINGS, INC., is organized under
18 the laws of the State of Delaware with its principal place of business in Los Angeles County,
19 California. In short, Defendant, 99 CENTS ONLY STORES LLC, entity has its principal place
20 of business in Los Angeles County, California and NUMBER HOLDINGS, INC., is organized
21 under the laws of the State of Delaware with its principal place of business in Los Angeles County,
22 California. *Id.* Thus, for purposes of diversity analysis, 99 CENTS ONLY STORES LLC, and
23 NUMBER HOLDINGS, INC., are citizens of California and Delaware. And, Plaintiff, JEROLD
24 PIERCE, was, and now is, a citizen of the County of Clark, State of Nevada. Therefore, complete
25 diversity is present.

10. Upon information and belief, Plaintiff, TRACI BARKER's general past damages are approximately One Hundred Ninety-One Thousand Seven Hundred Twenty-Nine Dollars & 53/100 (\$191,729.53) in past medical specials for left humerus fracture, neck pain, left wrist drop, left wrist pain, left shoulder, bodily limbs, organs and systems damage. As a result, the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00).

11. The United States District Court for the District of Nevada has original jurisdiction pursuant to 28 U.S.C. § 1332 in that the parties are citizens of different States and the amount in controversy exceeds the sum or value of Seventy-Five Thousand Dollars (\$75,000.00) exclusive of interests and costs.

12. Accordingly, Plaintiff's Complaint is removal pursuant to 28 U.S.C. 1441, which provides that a defendant may remove a case over which the federal court has original jurisdiction.

13. A copy of all process and pleadings served upon the Defendant is attached hereto as Exhibit "A."

WHEREFORE, Defendant, 99 CENTS ONLY STORES LLC dba 99 Cents Only Store #333, respectfully requests that this action proceed in this Court as an action properly removed to it.

DATED this 8th day of March 2022.

BRANDON | SMERBER LAW FIRM

/s/ Lew Brandon, Jr., Esq.

LEW BRANDON, JR., ESQ.

Nevada Bar No. 5880

JEFFREY J. ORR, ESQ.

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HOMERO GONZALEZ, ESQ.

Nevada Bar No. 15231

139 East Warm Springs Road

Las Vegas, Nevada 89119

Attorneys for Defendant,

99 CENTS ONLY STORES LLC dba

99 Cents Only Store #333

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I hereby certify that on March 8, 2022, I served the foregoing
DEFENDANT 99 CENTS ONLY STORES LLC dba 99 Cents Only Store #333' S NOTICE
OF REMOVAL OF ACTION TO UNITED STATES DISTRICT COURT UNDER 28 USC
§ 1441(a) via the Court's electronic filing and service systems to all parties on the current service
list.

CAP & KUDLER
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